



October 12, 2001

Mr. Kelley McCormick
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2001-4627

Dear Mr. McCormick:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153217.

The Office of the Governor (the "Governor") received a request for "the names, addresses and occupations of anyone being considered for the Texas Supreme Court," and for "copies of applications or letters of recommendation." You indicate that the Governor has released some responsive information. You claim that the requested information is excepted from disclosure under sections 552.101, 552.130, and 552.137¹ of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 33.032 of the Government Code provides that "the papers filed with and proceedings before the [State Commission on

¹The Legislature also enacted House Bill 2589 that added a section 552.136 to the Public Information Act, making certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Judicial Conduct] are confidential prior to the convening of a formal hearing." Gov't Code §33.032(a). None of the exceptions to confidentiality in subsection (c), (d), and (e), or in section 33.034 appear to apply. Thus, the information in Exhibit B must be withheld from disclosure under section 552.101 in conjunction with section 33.032.

You argue that a portion of the information in Exhibit E is excepted from disclosure under section 552.101 in conjunction with section 261.201 of the Family Code. However, section 261.201 makes confidential "a report of alleged or suspected abuse or neglect made under this chapter," and "the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation." The submitted information does not fall within the purview of section 261.201. Thus, section 261.201 is not applicable to the information at issue. Therefore, the submitted information in Exhibit E may not be withheld from disclosure under section 552.101.

Section 552.101 also encompasses the doctrines of common law and constitutional privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683; *see also*, Open Records Decision Nos. 470 (concluding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common law privacy), 455 (1987) (concluding that kinds of prescription drugs a person is taking are protected by common-law privacy; information regarding the applicants' illnesses or operations within the past year and physical handicaps is intimate personal information), 422 (1984) (concluding that details of self-inflicted injuries are presumed protected by common-law privacy), 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common law privacy). We therefore conclude that the highlighted portions of the applicants' application forms (Exhibit A) are protected from required disclosure under section 552.101 in conjunction with common law privacy. We have marked information in Exhibit E which also is private and must be withheld from disclosure.

We note that the submitted information contains a Texas driver's license number. Section 552.130 provides in relevant part:

- (a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license number in Exhibit D under section 552.130.

The submitted information also contains e-mail addresses obtained from the public. The Seventy-seventh Legislature recently added section 552.137 to chapter 552 of the Government Code. This new exception makes certain e-mail addresses confidential.³ Senate Bill 694, as passed May 14, 2001, signed by the Governor May 26, 2001, and made effective immediately, provides in relevant part:

Sec. 552.137. CONFIDENTIALITY OF CERTAIN E-MAIL ADDRESSES.

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.137). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The Governor must, therefore, withhold the highlighted e-mail addresses in Exhibits C and D under section 552.137. The remainder of the submitted information must be released to the requestor.

In summary, the information in Exhibit B must be withheld from disclosure under section 552.101 in conjunction with section 33.032. The highlighted portions of the applicants' application forms (Exhibit A) are protected from required disclosure under section 552.101 in conjunction with common law privacy. The information which we have marked in Exhibit E also is private and must be withheld from disclosure. Texas driver's license numbers must be withheld under section 552.130. The Governor must withhold e-mail addresses of members of the public under section 552.137. The remainder of the submitted information must be released to the requestor.

³House Bill 2589, which also makes certain e-mail addresses confidential, took effect on September 1, 2001. See Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Nettles", written in a cursive style.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 153217

Enc. Submitted documents

c: Ms. Peggy Fikac
1005 Congress Avenue, Suite 430
Austin, Texas 78701
(w/o enclosures)